United States

Court of Appeals

For the Ninth Circuit

W. L. CASEY and AGNES CASEY,
Appellants,

vs.

R. MAX ETTER and WILLIAM E. CULLEN,
Appellees.

No. 12287

Brief of Appellee

On Appeal From the District Court of the United States for the District of Idaho, Northern Division

---

HON. CHASE A. CLARK, *Judge*

WM. S. HAWKINS,
E. L. MILLER,
Wiggett Building,
Coeur d'Alene, Idaho,
Attorneys for Appellees.

INDEX

TABLE OF CASES

STATUTES CITED

TEXTS

United States
Court of Appeals
For the Ninth Circuit

W. L. CASEY and AGNES CASEY,
Appellants,

vs.

R. MAX ETTER and WILLIAM E. CULLEN,
Appellees.

No. 12287

JURISDICTION

The Statement in Appellants brief is accepted.

STATEMENT OF THE CASE

This is an action by the law firm of Cullen and Etter of Spokane, Washington, against W. L. Casey and wife of Bonners Ferry, Idaho, upon an oral contract of employment for legal services rendered. It was tried before a jury under a general denial by the appellant, and a verdict of the jury was returned finding that the reasonable value of appellees' legal services for the appellant was $4,000.00.

This employment arose out of these facts:
A company known as the Sulphur Springs

Gypsum Company was organized as the result of promotional efforts of one H. J. Adams. His method of finance was to obtain cash advances rather than to sell stock, and W. L. Casey along with the witnesses Albert Keinholz, Frank H. Davis, and others, made cash payments to Adams for the purpose of developing the Sulphur Springs Gypsum Company.

After the lapse of some time and numerous efforts to reconcile the financial status of the company, Casey and other similar investors became alarmed. Adams owned and controlled the majority of the stock and resultingly directed the affairs of the company. The investments of Casey, Keinholz, Davis and others were substantial, and particularly those of Mr. Casey. These investors made some investigation and in the course thereof were placed upon the Board of Directors by Mr. Adams, and given stock, apparently without consideration therefore, so as to qualify them to sit as Directors.

One of the first actions of that Board of Directors was to cause an audit to be made of the books of the company. This audit apparently reflected a condition which required, in the opinion of the Directors, immediate attention.

Casey and the other Directors consulted with other law firms in order to ascertain what could be done to rectify the affairs of the company and protect their individual investments. In view of the fact that Adams had control of the stock, these men, as directors, were advised that little, if anything, could be done to protect their individual investments.

The directors, including Casey, were then advised to seek the services of the law firm of Cullen and Etter. This was done and after an inspection of the books and the affairs of the company, Cullen and Etter rendered their opinion to the Directors. For these services Cullen and Etter were paid $500.00 by the company.

Among other advices given, Cullen and Etter stated to these directors, including Casey, that as individual investors, secured by notes and other evidences of indebtedness, they could not use the company funds nor their offices as directors in an endeavor to recover individual investments and must proceed in their individual capacities else they would be violating their fiduciary relationships.

Out of this advice, there arose the oral contract involved. Cullen and Etter asked each

individual if they wanted to retain the services of Cullen and Etter in an individual capacity and proceed to collect back their respective investments. Each was asked if that was their individual desire, each replied in the affirmative. It is that contract of employment and the reasonable value of services rendered thereunder which is involved in this action.

Keinholz, Davis, and others paid Cullen and Etter for the legal services rendered under that oral contract of employment for the recovery of their respective investments. Casey recovered approximately $70,000.00, admitted a liability for attorneys fees, and promised to come in and "straighten up" which he never did and therefore this law suit was instituted.

The Court submitted this proposition to the jury in the following language:

> "This case has been ably tried and the question you are to pass upon is relatively simple; the evidence in some regards has taken a rather wide range, but after all has been said the question for you to decide is: "Was there a contract between the plaintiffs and this defendant, and I do not mean by that a written contract, . .
>
> If you determine that there was such an agreement, then you will come to the question; did the plaintiffs render the service; if you determine that they did; then

you come to the question of the amount they are entitled to receive as compensation for those services."

The jury considered the foregoing and other instructions, to which the appellant had no objection, and rendered a verdict in favor of the appellees and against the appellant, in the amount of $4,000.00.

OBSERVATION

As an observation, the appellees contend and the Court considered that all exhibits introduced by both parties to this action were admitted in evidence solely for the purpose of showing the work done and the value thereof. The exhibits were not admitted in evidence as proof of a contract between the parties to this action. Nor is the content of such instruments material to the determination of the issues of this case.

AUTHORITIES

The trial court did not err in denying appellant's motions for a directed verdict, for judgment n. o. v., for motion for a new trial or in making and entering judgment on the verdict in favor of the appellees.

U. S. vs. 3969.59 acres of land
56 F. Supp., 831.

Carson vs. Talbot, 129 P. 2d

901, 64 Idaho 198 (and cases cited therein).

Exhibits 1, 2, 3, and 4, were admitted solely for the purpose of showing work done and not as evidence of a contract of employment.

The verdict of the jury and judgment thereon was not excessive and is sustained by competent evidence and will not be disturbed on appeal where it is sustained by any evidence.

The Supreme Court of Idaho has uniformly held that where the facts

> "might very well lead different minds to reaching different conclusions upon the issue presented; and where such is the case, however meager the evidence, if it is of a substantial nature and character, the findings of the triers of fact should prevail."
>
> Smith vs. Clearwater County et al. 65 Idaho 271,278, 143 P. 2d. 561.
>
> Hagan & Cushing Co. vs. Washington Water Power Co. (C. C. A. 9th Crt.) 99 Fed. 2d. 614, 617.

> "The jury is the sole judge of the credibility of the witnesses and the weight to be given their testimony, and a verdict will not be disturbed if supported by substantial and competent evidence."
>
> Poulsen et al vs. New Sweden Irr. Dist. 67 Idaho 177, 174 Pac. 2d. 206.

An attorney suing on quantum meruit for professional services may show not only the nature and character of services rendered and the result attained, but may show also his standing in the profession for learning, skill, proficiency and experience, and in determining the amount of the fee, it is proper to consider the time and labor required, the novelty and difficulty of the questions involved; the skill required to properly conduct the case, and the amount involved in controversy.

Levine vs. Berry, 195 P. 1003, (Wash.)

Stanton et al vs. Embry, 93 U. S. 548. 23 L. ED. 983.

Shufeldt vs. Hughes, 104 P. 253, 257 (Wash.)

See Annotation 143 A. L. R. 672.

SUMMARY OF EVIDENCE

Reference is made to the foregoing, and repetition thereof will be avoided.

Your attention is particularly invited to the brief testimony of Frank H. Davis (Tr. 106-111) and Albert Keinholz (Tr. 111-115).

These witnesses stood in the same positions as directors and individuals as did Mr. Casey. They recognized the existence of the same oral contract with Cullen and Etter and performed thereunder, by accepting the benefit of the legal services of Cullen and Etter and paying

therefor.

Casey accepted the benefits of the legal services of Cullen and Etter by receipt and retention of benefits to the extent of about $70,000.00.

As to the value of these services to Casey —the appellees, Cullen and Etter each fixed a value of $15,000.00. Edward J. Lehan, an expert witness, after hearing the plaintiff's case fixed a value of $15,000.00 but stated:

> "I would qualify that if it was across the table dispute; . . . On the basis of $12,-500.00. (Tr. 118).

The only evidence submitted to the jury on the question of the amount of the fees was the testimony of Messrs. Cullen, Etter, and Lehan. The appellant offered no evidence or testimony in that connection. The jury, in the exercise of its collective judgment fixed the value of those services at $4,000.00, and now, for the first time, appellant makes the unfounded claim that the amount is excessive.

VERDICT AND JUDGMENT THEREON IS NOT EXCESSIVE

As a result of the services of Cullen and Etter, Mr. Casey regained approximately $70,-000.00. This was his full investment in Sul-

pher Springs Gypsum Company. He cannot contend that the services of the appellees were not satisfactory, and admitted that:

> "as soon as I get back to Spokane I will get hold of the other boys and tell them what a wonderful job you have done; I am going to pay you myself several thousand dollars." (Tr. 56, 57.)

What other persons in the status of Mr. Casey paid to Cullen and Etter is of no concern in this action. Those people paid what the services of Cullen and Etter were worth to them. What Cullen and Etter's services were worth to Mr. Casey was decided by the jury to be $4,000.00.

> "The wealth of a defendant cannot be considered in any case to enhance the fee for professional services above a reasonable compensation for the services actually rendered. It cannot be considered to make a fee extortionate or a compensation unreasonably large. But every judge and every gentleman of the bar knows that much severe professional labor is rendered by practicing attorneys without any compensation, and much more for compensation so small as to be entirely inadequate. It is as difficult to defend the poor as the rich from a groundless charge of murder. It requires as much learning, labor, and professional skill to recover or save from attack property of little value, that may be the entire estate of the poor man, as it does to recover thousands of dollars for the

wealthy. The duty of the lawyer to defend the former and maintain his rights is as great as it is to the latter, and to the honor of the profession it may be said that it is performed with equal zeal and fidelity. But it is the general practice of the gentlemen of the bar to fix the fees for such services far below a fair compensation or to charge no fee at all,—to measure their fees more by the inability of such a client to pay a fair compensation, or to pay at all, than by the value of the services they render. When, on the other hand, a client who has the means to pay what professional services are fairly worth employs an attorney, it is right and just that he should pay a fair and reasonable compensation for the services he obtains.

Ward vs. Kohn (C. C. A. 8th)
58 F. 462.

The Appellate Court will not disturb the verdict of the jury unless the award of such jury is so grossly disproportionate to a sum reasonably warranted by the facts as to shock the sense of justice and raise a presumption that it was the result of passion and prejudice.

Garrett vs. Taylor
(Idaho, unreported)
October 4, 1949.

It is respectfully submitted that this Court should affirm the judgment of the Trial Court

based upon the verdict of the jury in the amount of $4,000.00.

Respectfully submitted,

WM. S. HAWKINS,

E. L. MILLER,

Attorneys for Appellees,
Wiggett Building,
Coeur d'Alene, Idaho.